

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

12 ESTEBAN BARCENA ANGELES, also) 3:10-cv-00640-HDM-RAM
known as, ESTEBAN BARCENA,)
13)
Petitioner,)
14) ORDER
vs.)
15)
IMMIGRATION AND NATURALIZATION)
16 SERVICE,)
17)
Defendant.

1 deportation under 8 U.S.C. § 1227(a)(2).¹ Barcena moves this court
 2 for an order that would entitle him to invoke the Interstate
 3 Agreement on Detainers, 18 U.S.C. Appendix, and obtain a speedy
 4 deportation hearing.² *Id.*

5 "The Sixth Amendment provides that 'in all criminal
 6 prosecutions, the accused shall enjoy the right to a speedy and
 7 public trial...' The Interstate Agreement on Detainers ... [is a]
 8 statutory means for effectuating this right. The Agreement provides
 9 for the speedy disposition of detainees based on 'untried
 10 indictments, informations, or complaints.'" *Argiz v. United States
 11 Immigration*, 704 F.2d 384 (7th Cir. 1983). A detainee is
 12 understood to be "a notification filed with the institution in
 13 which a prisoner is serving a sentence, advising that he is wanted
 14 to face criminal charges in another jurisdiction." *Id.*; see also
 15 Senate Report No. 91-1356, U.S. Code Cong. & Adm. News, 1970, Vol.
 16

17 ¹ Barcena is listed as an "alien-detainee." See Docket Case No.
 18 3:10-cv-640-HDM-RAM. He has been convicted of a felony/gross
 19 misdemeanor that would qualify as a deportable criminal offense under
 20 8 U.S.C. § 1227(a)(2). See also INA § 237(a)(2)(I); INA § 101(a)(43);
 21 8 U.S.C. § 1101(a)(43)(A); INA § 212(a)(2)(A)(i)(I); 8 U.S.C. §
 22 1182(a)(2)(A)(i)(I).

23 ² The docket lists the nature of suit as "Habeas Corpus - Alien
 24 Detainee" and "2254 Petition for Writ of Habeas Corpus." This motion
 25 should not be construed as a habeas petition. See *Argiz v. United
 26 States Immigration*, 704 F.2d 384 (7th Cir. 1983) (Petitioner-appellant
 27 filed similar motion under Interstate Agreement on Detainers, district
 28 court erroneously construed it as a petition for habeas corpus.)

1 3 at 4864-65.

2 Immigration deportation proceedings are not criminal
 3 proceedings. *Id.* They are civil in nature and are not conducted
 4 by a court of the United States. *Id.*; see also *Woodby v.*
 5 *Immigration & Naturalization Service*, 385 U.S. 276, 285 (1966).
 6 Therefore, an immigration charge cannot be classified as an
 7 "untried indictment, information, or complaint" within the meaning
 8 of the Agreement. *Id.* Accordingly, there is no relief available to
 9 Barcena under the Interstate Agreement on Detainers.

10 Even if Barcena was entitled to relief, this court does not
 11 have the authority to grant it. Only the Attorney General of the
 12 United States has the authority to remove an alien. 8 U.S.C. §
 13 1231(a)(4)(A), (B). It is within the sole discretion of the
 14 Attorney General to remove an alien prior to the completion of his
 15 prison sentence. 8 U.S.C. § 1231(a)(4)(A) (the Attorney General may
 16 not remove an alien who is sentenced to imprisonment until the
 17 alien is released from imprisonment); 8 U.S.C. § 1231(a)(4)(B) (the
 18 Attorney General is authorized to remove an alien, if the Attorney
 19 General determines that the alien is confined pursuant to a
 20 conviction for a nonviolent offense,³ or the alien's removal is
 21 appropriate and in the best interest of the United States); *Tamayo*

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23 ³ Barcena was not convicted of a nonviolent offense. Lewdness
 24 with a child under 14 would be considered an aggravated felony under
 25 INA § 101(a)(43) and 8 U.S.C. § 1101(a)(43)(A). It is also a crime
 26 a of moral turpitude. See INA § 212(a)(2)(A)(i)(I); 8 U.S.C. §
 27 1182(a)(2)(A)(i)(I); INA § 237(a)(2)(I); 8 U.S.C. § 1227(a)(2)(A).
 28 Both subject aliens to removal. *Id.*

1 *v. Holder*, 2009 WL 2488032 (C.D.Cal. 2009) (court lacked authority
2 to initiate deportation order); *United States v. Tinoso*, 327 F.3d
3 864, 866 (9th Cir. 2003) (determination of whether an alien is
4 subject to deportation resides in the Executive Branch).
5 Furthermore, “a district court cannot *sua sponte* issue a
6 deportation order without a request from the United States
7 Attorney.” *United States v. Marin-Castaneda*, 134 F.3d 551, 556 (3d
8 Cir. 1998) (district court lacked authority to depart downward in
9 sentence because of Attorney General’s statutory power to deport
10 alien before completion of prison term). Thus, this court does not
11 have the authority to expedite Barcena’s removal proceedings.

12 Lastly, 8 U.S.C. § 1231(a)(4)(D) states that imprisoned aliens
13 have no private right to speedy removal. Specifically, aliens
14 “imprisoned, arrested, or on parole, supervised release, or
15 probation” cannot assert a cause or claim “under this paragraph
16 against any official of the United States or of any State to compel
17 the release, removal, or consideration for release or removal of
18 any alien.” 8 U.S.C. § 1231(a)(4)(D); *United States v. Aispuro*, 127
19 F.3d 1133, 1134 (9th Cir. 1997) (an alien has no private right of
20 action to compel the Attorney General to remove him from the United
21 States prior to the completion of his sentence); *Tamayo*, 2009 WL
22 2488032 (no private right of action to compel deportation).

23 Barcena’s motion is DENIED.

24 It is so ORDERED.

25 DATED: This 18th day of November, 2010.

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UNITED STATES DISTRICT JUDGE
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